

ARKANSAS SUPREME COURT

No. CR 09-421

TOMMY HALL
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered June 4, 2009

PRO SE MOTIONS FOR SUBPOENA OF TESTIMONY, TO ORDER MILLER COUNTY OFFICIALS TO DELIVER DOCUMENTS, AND FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF [CIRCUIT COURT OF MILLER COUNTY, CR 2004-164, HON. JOE E. GRIFFIN, JUDGE]

APPEAL DISMISSED; MOTIONS MOOT.

PER CURIAM

In 2006, appellant Tommy Hall entered a plea of guilty to a charge of possession of a controlled substance with intent to deliver in Miller County Circuit Court and received a sentence, as an habitual offender, of 420 months' imprisonment in the Arkansas Department of Correction. The judgment so reflecting was entered on November 22, 2006. In 2008, appellant filed in the trial court a motion to suppress in the case, raising allegations that a traffic stop was in violation of his constitutional rights and asserting that his statements, a passenger's statements, and any contraband should be suppressed. The trial court entered an order that denied the motion and appellant lodged an appeal of that order in this court. He has now filed a motion to subpoena testimony and exhibits for his appeal, a motion requesting this court to order Miller County officials to deliver documents so that he may file his brief, and a motion requesting an extension of time in which to file appellant's brief.

An appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Smith v. State*, 367 Ark. 611, 242 S.W.3d 253 (2006) (per curiam). Appellant clearly cannot prevail here. His motion in the trial court concerning suppression of evidence in the case was in effect a motion to withdraw his guilty plea. This court has held that where a sentence has been entered and placed in execution prior to the filing of a motion to withdraw the guilty plea upon which it was based, the motion must be treated as having been made pursuant to Arkansas Rule of Criminal Procedure 37.1. *Mims v. State*, 360 Ark. 96, 199 S.W.3d 681 (2004) (per curiam). As a petition under Rule 37.1, the motion was not timely filed.

Where a conviction was obtained on a plea of guilty, Arkansas Rule of Criminal Procedure 37.2(c) requires that the petition for postconviction relief must be filed within ninety days of the entry of the judgment. In this case, where the judgment was entered more than two years prior to the filing of the motion, the request for postconviction relief fell outside of the time limitations. The time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition. *Womack v. State*, 368 Ark. 341, 245 S.W.3d 154 (2006) (per curiam).

Because appellant's request for postconviction relief was not timely filed, the trial court could not grant relief. Appellant clearly cannot prevail on appeal and the appeal is accordingly dismissed. The motions are moot.

Appeal dismissed; motions moot.